the present state of the labor market, but that if the labor market had held constant he would now earn $15 with the handicap of his injury. He was awarded $8.80, the difference between his past and his present wages. *Held*, that the award be modified to $7, the difference between his past wages and what he would be earning now if it were not for the fall in the labor market. *In re Durney*, 111 N. E. 166 (Mass.).

The British Workmen's Compensation Act (6 EDW. 7, c. 58, sched. 1, § 3), wherein the difference between past and present wages is set as a maximum, to be awarded in full only when proper in the circumstances, has been held to contemplate a compensation only for a diminution in earning power through an injury, not through a decline in the labor market. *Merry & Cuninghame* v. *Black*, 46 Scot. L. R. 812, 2 B. W. C. C. 372. See *Cardiff Corporation* v. *Hall*, [1911] 1 K. B. 1009, 1018, 1026, 4 B. W. C. C. 159, 168; *Dobby* v. *Wilson Pease Co.*, 2 B. W. C. C. 370, 371. *Cf. Thompson* v. *Johnson*, [1914], 3 K. B. 694, 7 B. W. C. C. 479; *Jamieson* v. *Fife Coal Co.*, 40 Scot. L. R. 704. In spite of the unqualified language of the statute in the principal case, to apply the theory developed by the English courts is more in accord with the fundamental purpose of workmen's compensation. And because of their essentially remedial nature, their fundamental purpose should be made operative by a liberal construction. See *Ryalls* v. *Mechanics' Mills*, 150 Mass. 190, 193, 22 N. E. 766, 767; *Colorado Milling, etc. Co.* v. *Mitchell*, 26 Colo. 284, 287, 58 Pac. 28, 30. See 28 HARV. L. REV. 307, 308. Thus, in the principal case, since the difference between the plaintiff's actual past wages and his actual present wages includes a slump in the labor market, that difference should not be made the basis of compensation, but either the scale of wages at the time of injury, or at the time of recovery, should be used throughout the computations. As the use of either basis is equally violative of the literal language of the act, and as the difficulty of estimating the average labor market for the entire period of compensation demands the selection of a market at a single arbitrary time, the rule of the principal case would seem the more natural. But *cf. Bevan* v. *Energlyn Colliery Co.*, [1912] 1 K. B. 63, 5 B. W. C. C. 169. And, though the purpose of the act is not to indemnify for injury, since it aims to measure the relief given to a workman of any particular standard on the basis of the full loss occasioned by the injury regardless of extrinsic occurrences, when the scale of wages has risen, the labor market should be equalized just as when it has fallen. But *cf. Pomphrey* v. *Southwark Press*, [1901] 1 Q. B. 86, 3 W. C. C. 194; *Irons* v. *Davis & Timmins*, [1899] 2 Q. B. 330, 1 W. C. C. 26. However, the fact that the present English act, after providing for the modification of awards to accord with what is proper in the circumstances, expressly sets the actual loss in wages as a maximum, may afford a distinction in this respect.

PARTITION — RIGHT OF TENANT UNDER "OIL LEASE" TO COMPEL PARTITION. — A tenant in common of certain land, purporting to be the sole owner, granted the exclusive rights to search for and take away oil and gas, together with all other rights reasonably necessary to do this. In order that he may exercise his rights upon his grantor's share of the land the grantee now sues the co-owners to compel a partition in kind. This the pleadings admit will be just. *Held*, that the suit is not maintainable. *Gulf Refining Co. of La.* v. *Hayne*, 70 So. 509 (La.).

The common law rule is that no one but the holder of a legal estate in possession can compel partition in his own right. See FREEMAN, CO-TENANCY AND PARTITION, 2 ed., § 446; 1 TIFFANY, REAL PROPERTY, § 175. The provisions of the Louisiana code as to partition are conflicting. See LA. REV. CIV. CODE, Art. 740, 1310. Under the civil law partition may be compelled by any obligee of a co-owner. See CODE NAPOLÉON, Art. 1166. See 34 CARPENTIER ET DU SAINT, RÉPERTOIRE DU DROIT FRANÇAIS, 149 (No. 766). Now it is generally

held that an "oil lease" merely gives title to the minerals when severed, together with rights in the nature of an easement. *Gulf Refining Co. of La.* v. *Rives*, 133 La. 178, 62 So. 623; *Heller* v. *Dailey*, 28 Ind. App. 555, 560, 63 N. E. 490, 493; *Beardsley* v. *Kan. Nat. Gas Co.*, 78 Kan. 571, 574, 96 Pac. 859, 860. See THORNTON, OIL AND GAS, 2 ed., §§ 51, 57 *a*. Hence, at common law, the grantee under such a lease could not compel partition in his own right. *Watford Oil and Gas Co.* v. *Shipman*, 233 Ill. 9, 84 N. E. 53. But *cf. Charleston, etc. R. Co.* v. *Leech*, 33 S. C. 175, 11 S. E. 631. It is submitted, however, that the interest created is really a *profit à prendre*. *Cf. Caldwell* v. *Fulton*, 31 Pa. St. 475; *Muskett* v. *Hill*, 5 Bing. N. Cas. N. C. 694. See WASHBURN, EASEMENTS AND SERVITUDES, 4 ed. *9, *80. Though a *profit* is a legal estate in the land, it is doubtful whether the holder of it can demand partition in his own right. The grantee under an "oil lease" should, however, be allowed to compel partition through his grantor since partition is reasonably necessary to make the grant effective. The decree for partition would be, in effect, specific performance of the grantor's covenant, followed by the latter's suit for partition. *Cf. Charleston, etc. R. Co.* v. *Leech*, *supra; Mee* v. *Benedict*, 98 Mich. 260, 57 N. W. 175; *Heaton* v. *Dearden*, 16 Beav. 147. However, in both common law and civil law jurisdictions the courts will generally refuse to partition in kind, land on which oil is actually known to exist, since it is presumed that such partition would be unjust. *Dangerfield* v. *Caldwell*, 151 Fed. 554, 558. See THORNTON, OIL AND GAS, 2 ed., § 277; LA. REV. CIV. CODE, § 1303. But that such a partition would be just is admitted by the pleadings in the principal case. However, to grant any partition in the principal case would involve the objection of partitioning the payment to the grantor, who contracted to convey the *profit à prendre* from the entire tract of land.

PROXIMATE CAUSE — INTERVENING CAUSES — NATURAL FORCES. — A tug under contract to tow stone-barges to and from a breakwater was disabled by a defective rudder. The barges were left in an exposed position, so that when the wind changed several hours later, one of them was sunk. But for the accident the barges would not have remained thus exposed. The owner brings a libel against the tug. *Held*, that the breaking of the rudder was the proximate cause of the loss. *The Enterprise*, 132 Fed. 131, 133 (Dist. Ct., Dist. of Conn.).

A carload of household goods was negligently delayed by the carrier, and several days later was injured in transit by an unprecedented flood which could not reasonably have been foreseen. But for the delay, the goods would not have been overtaken by the flood. The shipper sues the carrier. *Held*, that the delay was not the proximate cause of the injury. *Seaboard Air Line Ry.* v. *Mullin*, 70 So. 467 (Fla.).

The intervention of a new force does not make a cause remote if that force was foreseeable. *Milwaukee & St. Paul Ry. Co.* v. *Kellogg*, 94 U. S. 469, 473; *Carter* v. *Towne*, 98 Mass. 567; *Pastene* v. *Adams*, 49 Cal. 87. This would be decisive of the Federal case if at the time of the defendant's negligence, a shift in the wind and its consequences were foreseeable. It is submitted that a defendant may even be liable for unforeseeable results of his negligence. *Smith* v. *London, etc. R. Co.*, 6 C. P. 14. See 1 BEVAN, NEGLIGENCE, 3 ed., 88; Jeremiah Smith, "Legal Cause in Actions of Tort," 25 HARV. L. REV. 103, 123, 223, 237, 303. But a defendant cannot be held merely because the injury would not have happened but for his negligence. *Schoultz* v. *Eckardt Mfg. Co.*, 112 La. 568, 36 So. 593. A defendant is liable, however, if his negligence precipitate an unstable equilibrium though it was unknown and the result unforeseeable. *State* v. *O'Brien*, 81 Ia. 88,; *Hill* v. *Winsor*, 118 Mass. 251. So also, if his act substantially coöperate with an active force, even though that force be unforeseeable. *Romney Marsh* v. *Trinity House*, L. R. 5 Ex. 204; *New Brunswick Steamboat, etc. Co.* v. *Tiers*, 24 N. J. Law 697. But if an independent unfore-